

3

WALTER & WILHELM LAW GROUP
a Professional Corporation
Riley C. Walter #91839
Michael L. Wilhelm #101495
Holly E. Estes #276933
205 E. River Park Circle, Ste. 410
Fresno, CA 93720
Telephone: (559) 435-9800
Facsimile: (559) 435-9868
E-mail: rileywalter@W2LG.com
E-mail: mwilhelm@W2LG.com
E-mail: hestes@W2LG.com

Co-Counsel for Elaine Long and George Sarantos

BETTS, RUBIN & MCGUINNESS
James Betts #110222
907 Santa Fe Avenue, Suite 201
Fresno, CA 93721
Telephone: (559) 438-8500
Facsimile: (559) 438-6959
E-mail: br@bettsrubinlaw.com

Co-Counsel for Elaine Long

CORNWELL & SAMPLE
Stephen Cornwell #40737
7045 No. Fruit Ave.
Fresno, CA 93711
Telephone: (559) 431-3142
Facsimile: (559) 436-1665
E-mail: steve@cornwellsample.com

Co-Counsel for George Sarantos

IN THE UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

In re

CLUB ONE ACQUISITION CORP.

Debtor in Possession.

TAX ID: 20-8422320
Address: 11150 Santa Monica Blvd.
Suite 700
Los Angeles, CA 90025

CASE NO. 15-14021

DC No.: WW-4

Chapter 11

**EX PARTE APPLICATION FOR EXAMINATION OF KYLE KIRKLAND
PURSUANT TO BANKRUPTCY RULE 2004 AND FOR PRODUCTION OF
DOCUMENTS**

TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY
JUDGE:

George Sarantos and Elaine Long ("Applicants"), by and through their counsel, hereby apply for an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004") directing Kyle Kirkland ("Kirkland") to appear for an examination and produce documents related to the acts, conduct, property, liabilities, and financial condition of Club One Acquisition Corp. (the "Debtor") and any other matter which may affect the administration of the Debtor's estate.

Applicants represent as follows:

1. The Debtor filed its Chapter 11 petition on October 14, 2015. Kirkland was one of three directors who signed the Unanimous Written Consent to and approval of the filing of the underlying bankruptcy case. *See Voluntary Petition* [DC-1].

2. Kirkland is an officer and director of the Debtor. *See Declaration of Kyle Kirkland in Support of Motion to Use Cash Collateral and Grant Adequate Protection* [DC-9] filed in *In re Club One Casino, Inc.*, Case No. 15-14017. Kirkland is also a 40% shareholder in the Debtor and a 50% shareholder in KMGI, Inc., the sole secured creditor of the Debtor. *Id.* The Debtor is the wholly owned subsidiary of COAC. *Id.*

3. Rule 2004(a) provides that "[o]n motion of any party in interest, the court may order the examination of any entity." Such examination may relate to the acts, conduct, or property, or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate. *See Fed. R. Bankr. P. 2004(b).*

4. Rule 2004 does not require notice or a hearing before it can be utilized by a party in interest. *Fed. R. Bankr. P. 2004(a); 11 U.S.C. § 102(1).* Accordingly, bankruptcy courts routinely enter Rule 2004 orders upon the filing of an *ex parte* application. Rule 2004 provides a party in interest with a powerful and important tool

1 by which he or she can quickly compel third parties, whether creditors or non-creditors,
2 to provide information concerning the debtor's assets, liabilities and business activities.
3 *In re GHR Energy Corp.*, 33 B.R. 451, 453 (Bankr. D. Mass. 1983). The range of
4 examination under Rule 2004 is unfettered and broad. *In re Donubilo*, 177 B.R. 932,
5 940 (E.D. Cal. 1993).

6 5. Applicants request Kirkland produce the documents shown on **Exhibit**
7 **"A"** by December 9, 2015, and that the examination of Mr. Kirkland be ordered for
8 December 18, 2015 at 1:00 p.m.

9 WHEREFORE, the Applicants pray as follows:

10 A. The Court enter an Ex Parte Order pursuant to Rule 2004 authorizing the
11 examination of Kirkland on December 18, 2015 at 1:00 p.m.;

12 B. The Court order the production of the documents shown on **Exhibit "A"**
13 by December 9, 2015; and

14 C. For such other relief as is just and proper.

15
16 Dated: November 24, 2015, 2015

WALTER & WILHELM LAW GROUP,
a Professional Corporation

17
18
19 By:

Holly E. Estes

Holly E. Estes,
Attorney for George Sarantos and Elaine Long